

Court of Appeals, State of Michigan

ORDER

Robert Davis v City of Detroit Financial Review Team

William C. Whitbeck
Presiding Judge

Docket No. 309453

Peter D. O'Connell

LC No. 12-000341-CZ

Michael J. Kelly
Judges

The Court orders that, in lieu of granting the application for leave to appeal, MCR 7.205(D)(2), the temporary restraining order dated April 2, 2012 and entered in the circuit court register of actions April 3, 2012 is VACATED. Further, we REMAND this case to the circuit court for entry of an order dismissing plaintiff-appellee's complaint. By its plain language, MCL 141.1513(3) does not set any time limit on the period of service of members of a review team appointed under the Local Government and School District Fiscal Accountability Act, MCL 141.1501 *et seq.* Rather, MCL 141.1513(3) merely requires a review team to make a report of its findings to the Governor within 60 days of its appointment, subject to the ability of the Governor on request to extend that period for an additional 30 days. In contrast, MCL 141.1513(1)(c) provides a review team with authority to negotiate and sign a consent agreement with the chief administrative officer of the relevant local government with no set time limit on the exercise of that authority. Accordingly, there is nothing in the plain language of the Local Government and School District Fiscal Accountability Act to preclude defendant-appellant from attempting to negotiate and sign a consent agreement as to the City of Detroit although it has already provided its report to the Governor under MCL 141.1513(3). See, e.g., *Driver v Naini*, 490 Mich 239, 246-247; 802 NW2d 311 (2011) (clear and unambiguous statutory language must be applied as written). We note that the doctrine of judicial estoppel as discussed in *Paschke v Retool Industries*, 445 Mich 502, 509; 519 NW2d 441 (1994), concerns a party's assertion of inconsistent *factual* positions. Indeed, contrary to the import of plaintiff-appellee's attempt to invoke that doctrine, this Court is not bound by party's statement of law or even stipulations of the parties as to a point of law. *Kimmelman v Heather Downs Management Ltd*, 278 Mich App 569, 576; 753 NW2d 265 (2008).

The motion to stay is DISMISSED as moot in light of our disposition of this appeal.

Pursuant to MCR 7.215(F)(2), this order shall be given immediate effect.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

APR - 4 2012

Date

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line. Below the line, the words "Chief Clerk" are printed.

Chief Clerk